11-1301-6028-1

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA HIGHER EDUCATION COORDINATING BOARD

In the Matter of Proposed
Permanent Rules of the Higher
Education Coordinating Board
Governing Definitions for
Higher Education Programs,
Minn. Rules Part 4830.0100.

REPORT OF THE
ADMINISTRATIVE LAW JUDGE

The above-entitled matter came on for hearing before Administrative Law Judge Barbara L. Neilson on January 27, 1992, at 9:00 a.m. in the Fifth Floor Conference Room, Veterans Services Building, 20 West Twelfth Street, St. Paul,
Minnesota.

This Report is part of a rulemaking proceeding held pursuant to Minn. Stat. 14.131 to 14.20 (1990), to hear public comment, determine whether the
Minnesota Higher Education Coordinating Board ("the Board") has fulfilled all relevant substantive and procedural requirements of law applicable to the adoption of the rules, evaluate whether the proposed rules are needed and reasonable, and determine whether or not modifications to the rules proposed by the Board after initial publication are substantially different from those originally proposed.

Cheryl Maplethorpe, Financial Aid Director, Minnesota Higher Education Coordinating Board, Suite 400, Capitol Square, 550 Cedar Street, St. Paul, Minnesota 55101, appeared on behalf of the Board at the hearing. The Board's
hearing panel consisted of Ms. Maplethorpe; Mary Lou Dresbach, Administrative Liason for the Board; and Joseph Graba, Deputy Executive Director of the Board. Forty-one persons attended the hearing. Thirty-one persons signed the
hearing register. The Administrative Law Judge received ten agency exhibits and three public exhibits as evidence during the hearing. The hearing was conducted until all interested persons, groups, or associations had an opportunity to be heard concerning the adoption of these rules.

The record remained open for the submission of written comments until February 18, 1992, twenty calendar days following the date of the hearing. Pursuant to Minn- Stat. 14.15, subd. 1 (1990), three business days were allowed for the filing of responsive comments. At the close of business on February 21, 1992, the rulemaking record closed for all purposes. The Administrative Law Judge received 306 written comments from interested persons
during the comment period and a petition containing 165 names. The Board submitted written comments responding to matters discussed at the hearing and comments filed during the twenty-day period. The Board did not propose any further amendments to the rules.

This Report must be available for review by all affected individuals upon request for at least five working days before the Board takes any further action on the rules. The Board may then adopt final rules or modify or withdraw its proposed rules. If the Board makes changes in the rules other than those recommended in this report, it must submit the rules with the complete hearing record to the Chief Administrative Law Judge for a review of the changes prior to final adoption. Upon adoption of final rules, the agency must submit the rules to the Revisor of Statutes for a review of the form of the rules. The agency must also give notice to all persons who requested to be informed when the rules are adopted and filed with the Secretary of State.

Based upon all the testimony, exhibits, and written comments, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On November 25, 1991, the Board filed the following documents with the Chief Administrative Law Judge:

   (a) a copy of the proposed rules as certified by the Revisor of Statutes;
   (b) a copy of the Board's proposed Order for Hearing;
   (c) a copy of the proposed Notice of Hearing;
   (d) the Statement of Need and Reasonableness (SONAR);
   (e) an estimate of the number of persons expected to attend the hearing and the expected length of the Board's presentation at the hearing; and
   (f) a statement indicating that the Board did not intend to provide discretionary additional public notice of the hearing.

2. On December 19, 1991, the Board mailed the Notice of Hearing to all persons and associations who had registered their names with the Board for the purpose of receiving notice of the proposed adoption of rules by the Board.

3. On December 23, 1991, a copy of the proposed rules and the Notice of Hearing were published at 16 State Register 1529.

4. On December 26, 1991, the Board filed the following documents with the Administrative Law Judge:

   (a) the Notice of Hearing as mailed;
   (b) a copy of the State Register pages containing the Notice of Hearing and the proposed rules;
   (c) an affidavit stating that the Notice of Hearing was mailed on December 19, 1991, to all persons on the Board's mailing list;
   (d) an affidavit certifying that the Board's mailing list was accurate

and complete as of that date;

(e) a copy of the Notice of Intent to Solicit Outside Information published in 16 State Reg. 254 (Aug. 12, 1991); and

(f) an identification of the Board's hearing panel.

Nature of the Proposed Rule, and Statutory Authority

5. The proposed rules define terminology used in determining the eligibility of students and programs for State post-secondary financial aid.
Due to amendments to the statute governing the provision of grants to students, the Board seeks in its proposed rules to define "full-time" for purposes of grants other than work-study grants to mean the enrollment level
set forth in Minn. Stat. 136A.101, subd. 7a (1992 Supp.), i.e., enrollment
in a minimum of 15 credits per quarter or semester or the equivalent.
"Full-time" for purposes of work-study grants is defined to mean enrollment in
a minimum of 12 credits per quarter or semester or the equivalent. The proposed rules also amend the definition of "Minnesota resilent" contained in
the current rules to exclude out-of-state residents who attend Minnesota high
schools; add new definitions of "academic year," "certificate program" and "designated rural area"; and amend the current rule defining "eligible student" to incorporate the definition of satisfactory academic progress set
forth in Minn. Stat. 136A.101, subd. 10.

In its Notice of Hearing, the Board asserted that Minn. Stat. 136A.04
and 136A.16 provide authority for the promulgation of the proposed rules.
Minn. Stat. 136A.04, subd. 1(8) (1992 Supp.), generally authorizes the Board
to promulgate rules "necessary to administer the programs under its supervision." Minn. Stat. 136A.16, subd. 2 (1990), authorizes the Board to
"prescribe appropriate rules to carry out the purposes of sections 136A.15 to
136A.1702," relating to the Board's administration of various loan programs.
The proposed rules set forth definitions of terms used by the Board in determining student and program eligibility for financial aid programs administered by the Board under Chapter 136A of the Minnesota Statutes. The
Administrative Law Judge concludes that the Board has general statutory authority under Minn. Stat. 136A.04, subd. 1(8) (1992 Supp.), and 136A.16,
subd. 2 (1990), to adopt these rules.

Small Business Considerations in Rulemaking

6. Minn. Stat. 14.115, subd. 2 (1990), requires state agencies proposing rules which may affect small businesses to consider methods for reducing adverse impact on those businesses. In its Notice of Hearing, the Board asserted that the small business statute is inapplicable to this rulemaking proceeding. In support of its position, the Board explained that
the proposed rules "define terminology related specifically to student and program eligibility for purposes of state post-secondary financial aid programs administered by the Board. These state financial aid programs are

intended to assist students demonstrating financial need in their pursuit of a post-secondary education and therefore do not impact small businesses."

Minn. Stat. 14.115, subd. 2 (1990), requires that methods for reducing impact on small businesses be taken into account when agencies propose rules "which may affect small businesses." "Small business" is defined in 14.115, subd. 1, as "a business entity . . . that (a) is independently owned and operated; (b) is not dominant in its field; and (c) employs fewer than 50 full-time employees or has gross annual sales of less than $4,000,000." The proposed rules relate to grants provided by the State to individual students attending institutions of higher education. These institutions are not operated as "business entities" within the meaning of the statute. The Administrative Law Judge concludes that there is no indication that the

proposed rules may affect small businesses within the meaning of Minn. Stat. 14.115, subd. 2 (1990), and that the Board thus need not consider the factors set forth in the statute for reducing the impact of rules on small businesses.

Fiscal Notice

7. Minn. Stat. 14.11, subd. 1 (1990), requires agencies proposing rules that will require the expenditure of public funds in excess of $100,000 per year by local public bodies to publish an estimate of the total cost to local public bodies for the two-year period immediately following adoption of the rules. The proposed rules involve grants given by the State to students in institutions of higher education, and there was no contention that the rules require any expenditures of public money by local public bodies. Accordingly, the preparation of a fiscal notice is not required for these rules

Impact On Agricultural Land

8. Minn. Stat. 14.11, subd. 2 (1990), requires that agencies proposing rules that have a "direct and substantial adverse impact on agricultural land in the state" comply with the requirements set forth in Minn. Stat. 17.80 to 17.84 (1990). Under those statutory provisions, adverse impact is deemed to include acquisition of farmland for a nonagricultural purpose, granting a permit for the nonagricultural use of farmland, the lease of state-owned land for nonagricultural purposes, or granting or loaning state funds for uses incompatible with agriculture. Minn. Stat. 17.81, subd. 2 (1990). Because the proposed rules will not have a direct and substantial adverse impact on agricultural land within the meaning of Minn. Stat. 14.11, subd. 2 (1990), these statutory provisions do not apply.

Outside Information Solicited

9. In formulating these proposed rules, the Board originally published a Notice of Intent to Solicit Outside Information in August of 1991. see 16 State Reg. 254 (Aug. 12, 1991). No comments were received by the Board in response to the Notice. The Board then published a version of these rules in

the State Register on October 7, 1991. At that time, the Board believed that, owing to the nature of the rule changes, the Board might be able to adopt the proposed rules without a public hearing. The large number of comments and hearing requests received by the Board in response to the October 7, 1991, publication, however, clearly indicated that a hearing would be required. The Board modified the rule provisions in response to these comments before publishing the version of the rules proposed for consideration in the current proceeding. The version of the rules published on October 7, 1991, is not involved in this rulemaking proceeding. Accordingly, only comments provided in response to the version of the rules published in the December 23, 1991, State Register will be discussed in this Report.

Substantive Provisions

A. Need for and Reasonableness pf the Proposed rule in General

10, The Administrative Law Judge must determine, inter alia, whether the need for and reasonableness of the proposed rules has been established by the

Board by an affirmative presentation of fact. The Board prepared a Statement of Need and Reasonableness ("SONAR") in support of the adoption of the proposed rules. At the hearing, the Board primarily relied upon its SONAR as its affirmative presentation of need and reasonableness. The SONAR was supplemented by the comments made by the Board at the public hearing and in its written post-hearing comments.

The question of whether a rule is reasonable focuses on whether it has a rational basis. The Minnesota Court of Appeals has held a rule to be reasonable if it is rationally related to the end sought to be achieved by the statute. Broen Memorial Home v. Minnesota Department of Human Services, 364 N.W.2d 436, 440 (Minn.App. 1985); Blocker Outdoor Advertising Company v. Minnesota Department of Transportation, 347 N.W.2d 88, 91 (Minn-App. 1984). The Supreme Court of Minnesota has further defined the burden by requiring that the agency "explain on what evidence it is relying and how the evidence connects rationally with the agency's choice of action to be taken." Manufactured Housing Institute v. Pettersen, 347 N.W.2d 238, 244 (Minn. 1984).

This Report is generally limited to the discussion of the portions of the proposed rules that received significant critical comment or otherwise need to be examined. Due to the large number of students and other interested individuals who submitted comments and the substantive uniformity of the comments, only a limited number of the individuals who filed comments will be individually identified. Persons or groups who do not find their particular comments summarized in this Report should know that the Administrative Law Judge has read and considered each suggestion. Because some sections of the proposed rules were not opposed and were adequately supported by the SONAR, a detailed discussion of each section of the proposed rules is unnecessary. The Administrative Law Judge specifically finds that the need for and reasonableness of the provisions that are not discussed in this Report have been demonstrated by an affirmative presentation of facts, and that such provisions are specifically authorized by statute.

B. Section by section analysis of proposed rule part 4830.0100 - Definitions for Higher Education Programs

11. The proposed rules amend two subparts of the definitional section of the existing Board rules and add four subparts defining new terms. Each subpart of the proposed rules will be discussed below.

Subpart 1a. Academic Year

12. Subpart la of the proposed rules defines "academic year." The definition varies depending upon the method used by the educational institution to measure academic progress. With respect to schools using the semester, trimester, or quarter system, an academic year is defined as a period of time in which a full-time student is expected to complete the equivalent of at least two semesters, two trimesters, or three quarters. With respect to schools that utilize credit hours to measure academic progress but do not use a semester, trimester, or quarter system, the proposed rules provide that an academic year is a period of time in which a full-time student is expected to complete at least 24 semester hours or 36 quarter hours (prior to July 1, 1992), and at least 30 semester hours or 45 quarter hours (after June 30, 1992). Finally, with respect to schools that measure academic progress in clock hours, the proposed rules provide that an academic year is a

period of time in which a full-time student is expected to complete at least 900 clock hours.

The definition of "academic year" in the proposed rules was included by the Board in order to clarify the meaning of this term and aid the Board in administering financial aid programs. Although the term is frequently used in Chapter 136A (See, e.g., Minn. Stat. 136A.121, subd. 10, 136A.125, subd. 4, 136A.1352, subd. 2(b), 136A.1353, subd. 2, and 136A.1354, subd. 2 (1990), which require that various types of grants must be awarded for one academic year, subject to renewal), it is not defined in the statute. The proposed rule appears to encompass all of the current systems of measuring academic progress used by institutions of higher learning. Subpart la has been shown to be needed and reasonable to clarify the duration of grant awards and ensure consistency in the administration of grant programs.

Subpart 2a - Certificate Program

13. Students enrolled in certificate programs may be eligible to receive grants from the State. Subpart 2a of the proposed rules defines "certificate program" as a program that: (1) is offered by an "eligible" school as defined in existing rule part 4830.0300, subp. 1; (2) consists of at least twelve quarter credits or the equivalent, or 300 clock hours; and (3) is at least eight weeks long. The definition will apply after June 30, 1992. The version of the rules published in October of 1991 required that qualifying programs be a minimum of ten weeks long. The minimum duration was changed to eight weeks in the current version of the rules in response to comments received by the Board prior to the publication of the proposed rules in December of 1991.

The Board explained that the definition was proposed "to clarify program requirements as they relate to state financial aid program eligibility, and to ensure equitable treatment of students applying for financial aid SONAR at 2. No comments were received in this rulemaking proceeding objecting to the definition of "certificate program." The Board has shown that the definition is needed and reasonable as proposed.

subpart- 3a Designated Rural Area

14. Minn. Stat. 136A.1352, subd. 1 (1992 Supp.), requires the Board to provide grants to nursing students who agree to practice in a "designated rural area" as defined by the Board. Minn. Stat. 136A.1355, subd. 1 (1992 Supp.), requires the Board to establish a loan forgiveness program for medical students who agree to practice in "designated rural areas," as defined by the

Board. Subpart 3a of the proposed rules defines the term "designated rural area." The rules specify that the area outside the cities of Duluth, Mankato,
Moorhead, Rochester, and St. Cloud and outside the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington shall be deemed a "designated rural area." The Board did not explain the basis for its selection of these cities and counties in its SONAR, its remarks at the hearing, or its written comments. No commentators objected to the proposed rule, however, and it appears that the proposal properly excludes areas in the State that are primarily urban and densely populated. The Board explained in its Notice of Hearing and SONAR that the proposed rules seek to define eligible service areas for rural medical programs administered by the Board and that the definition was proposed in order to aid in program administration and clarify

the meaning of this term. The Administrative Law Judge finds that the definition of "designated rural area" contained in the proposed rules is needed and reasonable to accomplish the Board's intended purpose.

Subpart 5 - Eligible- Student

15. The existing Board rules require that, in order to be eligible for the receipt of grants, a student must be making satisfactory progress as determined by the school. Recent legislative amendments to Chapter 136A included the following definition of "satisfactory academic progress":

> "Satisfactory academic progress" means that at the end of a student's second academic year of attendance at an institution:
>
> (1) The student has at least a cumulative grade point average of C or its equivalent, or academic standing consistent with its graduation requirements; or
>
> (2) The student's failure to have at least a cumulative grade point average of C or its equivalent, or academic standing consistent with its graduation requirements, was caused by (a) the death of a relative of the student; (b) an injury or illness of the student; or (c) other special circumstances.

In response to this statutory amendment, the Board has proposed that the language of item E of subpart 5 of its existing rules be changed to require that students be making satisfactory academic progress as defined in Minn. Stat. 136A.101, subd. 10. It is necessary and appropriate for the Board to amend the exising rule provision because, if it were left unaltered, it would conflict with the statutory definition. No objections were made to the proposed rule during the rulemaking proceeding. Subpart 5 of the proposed rules has been shown to be needed and reasonable.

Subpart-8a - Full-time

16. The State Legislature recently amended Chapter 136A of the Minnesota Statutes to require that, effective July 1, 1992, a student must enroll in a minimum of 15 credits per quarter or semester (or the equivalent) in order to qualify as a "full-time" student for purposes of grant eligibility. Minn. Stat. 136A.101, subd. 7a (1992 Supp.). In subpart 8a of the proposed rules, the Board adds a new item defining "full-time" to mean "the enrollment level defined in Minnesota Statutes, section 136A.101, subd. 7a, except that for purposes of work-study grants administered under parts 4830.2000 to 4830.2600, 'full-time' means enrollment in a minimum of 12 credits per quarter or semester, or the equivalent." The proposed rule thus incorporates the statutory definition of "full-time" student with respect to grants other than work-study grants. Prior to the statutory amendment, the Board applied a 12-credit standard to determine whether a student should be deemed "full-time."

Numerous students, faculty members, and college administrators from schools throughout the State appeared at the hearing and filed written comments opposing the 15-credit requirement. Several of the commentators

expressed their anger and disappointment with a system which purports to support education while making financial support difficult to obtain. John Schullo, Director of Fianancial Aid at Bemidji State University, commented

that students take less than 15 credits because class schedules or outside obligations simply do not permit them to take more credits, not because they are "prolonging a good thing until their grants run out . . . ." In his opinion, the legislation will not accomplish its goal of encouraging students to graduate in four years. Amy Stromwell, a junior at Hamline University, commented that many college students must hold two or three jobs in order to pay for school. Richard Howard, a student at St. Paul Technical College, and Denise Pieratos, an architecture student at the University of Minnesota, stressed the intensity of some courses and the heavy time investment already required of students in particular areas of study, such as science and architecture. Many students submitted individually-completed copies of a form letter indicating that their schedules require them to spend a very large number of hours each week traveling to and from school, attending classes, studying, completing homework assignments, and working. In many instances, the schedules submitted by these students required well over the number of hours which would qualify as full-time in an employment setting. These students emphasized the great difficulty and hardship that would be associated with a requirement that they carry 15 credits in order to be considered "full-time."

Gary West, Dennis Stukenborg, Troy Madson, Lori Will, Laura Feiker, Ginny Summer, Robert Anderson, Carol Dockendorf, Kristi Waite, Kenneth Lettermaier, and many other students and administrators of Minnesota universities and community colleges who commented in opposition to the proposed rule were particularly concerned about the impact of the 15-credit requirement requirement on "nontraditional" students who must raise and support a family while attending school. Ms. Summer indicated that 82 percent of the 56,000 students in the community college system are nontraditional students, and 71 percent have at least one child. These students felt that, given the effort that nontraditional students are required to expend on school, work and family obligations, it would be unfair to impose a 3-credit increase to maintain full-time status. Other commentators, such as Mr. Schullo, Shari Seelig, David Schrot, and Barbara Blacklock, pointed out that the 15-credit requirement will have an adverse impact on low-income, minority, and disabled students. The Board acknowledged the difficulties that many students would face, but indicated that it was required to apply the 15-credit definition by virtue of the Legislature's enactment of the amendments to Chapter 136A.

Where the Legislature has expressed its intent in a statute, an agency is not authorized to act in a manner inconsistent with that intent. State-v., Lloyd A. Fry Roofing Co., 246 N.W.2d 696, 699-700 (Minn. 1976); City of Morton v.Minnesota Pollution Control Agency, 437 N.W.2d 741, 746 (Minn.App. 1989). In this rulemaking proceeding, the Legislature has clearly expressed its intent that full-time students must carry 15 credit hours per quarter. There is no other reasonable interpretation of Minn. Stat. I 136A.101, subd. 7a (1992 Supp.). Were the Board to retain the 12-credit standard, its practice would be inconsistent with the authorizing statute and thus vulnerable to challenge. The Board has shown that the definition of "full-time" in the proposed rules is needed and reasonable to conform the Board's activities to the statute that governs the administration of State grant programs.

17. Many of those who opposed the 15-credit definition emphasized the adverse impact that the application of the definition will have on grant awards. For example, Karen Baltes, Financial Aid Director of Brainerd Community College, estimated that 32 percent of all Brainerd Community College

students will lose their state grant if they remain at their current enrollment levels, and projected that there will be a 32 percent overall reduction in the dollar amounts of such grants. Patricia S. Holycross, Financial Aid Director of Itasca Community College, indicated that 46 percent of the students at the college will have their state grant reduced or eliminated when the 15-credit definition takes effect.

The Minnesota Association of Financial Aid Administrators (MAFAA), the Minnesota Private College Council, and finanical aid administrators from the University of Minnesota, Anoka-Ramsey Community College, Concordia College, Dunwoody Industrial Institute, Anoka Technical College, Itasca Community College, Bethel College, Fergus Falls Community College, and Bemidji Technical College suggested that the adverse impact of the statutorily-required 15-credit definition could be reduced by altering the grant formula utilized by the State. age Public Exhibits 1-3. The formula presently used by the State with respect to full-time students first calculates a cost of attendance budget by adding together tuition, fees, living expenses, and miscellaneous expenses. The student's proportional share of the budget (50%) is then subtracted. Finally, the amounts of any additional student contribution, parental contribution, and federal Pell grant awards are subtracted in order to arrive at the amount of the state grant. Public Exhibit 3; See also Minn. Rules pt. 4830.0600, subp. 1 (1991). According to testimony provided at the hearing, a different formula is used for part-time students. In such cases, the cost of attendance budget (comprised of tuition, fees, living expenses, and miscellaneous expenses) is prorated based upon the percentage of full-time credits carried by the student. Thus, under the proposed rules, the cost of attendance budget for a student who carried twelve credits would be calculated by multiplying the projected cost of tuition, fees, living expenses, and miscellaneous expenses by .80, based upon a rationale that the student is taking 12/15ths (80 percent) of a full-time, 15-credit courseload. The remainder of the calculation proceeds in the same fashion as it does for full-time students.

MAFAA and the other administrators mentioned above pointed out that the living expenses for part-time students do not decrease simply because they are taking less than 15 credits. They thus urged that the Board not prorate the living expenses component of the cost of attendance figure for part-time students. Such an approach would have the effect of increasing the amount of the grants awarded to part-time students. The Board declined to modify the proposed rules to specify such an approach because the Board believed it would be contrary to Chapter 136A. Based upon a review of the statute, it is evident that the Board does not have the discretion to adjust the cost of attendence in this fashion. "Cost of attendance" is defined in Minn. Stat. 136A.121, subd. 6 (1992 Supp.), as tuition, fees, room and board expenses, and miscellaneous expenses. The statute further requires that, "[f]or students attending less than full time, the board shall prorate the cost of

attendance." To adopt the suggestion of the commentators would conflict with an express statutory provision and render any rule authorizing such an approach defective.

In addition, MAFAA and certain of the college administrators suggested that mid-range cost of attendance averages be utilized in calculating the cost of attendance portion of the budget rather than adhering to the Board's current approach of utilizing the lowest cost of attendance In each range, This suggestion appears to be based upon language contained in Minn. Stat.

136A.121, subd. 6 (1992 Supp.), stating that "the cost of attendance consists of allowances specified by_the board for room and board and miscellaneous expenses." (Emphasis added.) While there is no evidence in the record regarding the manner in which the Board sets these allowances, it appears that they are not specified in the Board's existing rules. Moreover, there is no indication in the Notice of Hearing issued by the Board or in the language of the proposed rules themselves which suggests that allowances for room and board and miscellaneous expenses of part-time students are being set in this rulemaking proceeding.

One of the issues to be considered in rulemaking proceedings is whether a rule has been modified in a manner which makes it substantially different from the rule as originally proposed. Minn. Stat. 14.15, subd. 3 (1990). In determining whether a proposed final rule or a rule as adopted is substantially different, the Administrative Law Judge is directed to consider the extent to which the rule:

> [A]ffects classes of persons who could not have reasonably been expected to comment on the proposed rules at the rulemaking hearing, or goes to a new subject matter of significant substantive effect, or makes a major substantive change that was not raised by the original notice of hearing in such a way as to invite reaction at the hearing, or results in a rule fundamentally different in effect from that contained in the notice of hearing.

Minn. Rules pt. 1400.1100, subp. 2 (1991).

Based upon a consideration of these factors, the Board would be unable to adopt the allowance calculation method suggested by MAFAA a, a rule in this rulemaking proceeding because it would constitute a substantial change from the rules as originally proposed. The proposed rules are limited to the definition of terms relating to eligibility for grant programs. The MAFAA suggestion relates to a new subject matter (grant calculation) of significant substantive effect and would bring about a major substantive change that was not encompassed within the original Notice of Hearing issued by the Board in this matter. Were the Board to adopt MAFAA's suggested use of mid-range calculations as a rule in this proceeding, the Board's action would constitute a substantial change from the rules as originally proposed and would render that portion of the rules defective. While the Board would not be able to adopt the suggested change as a rule because it would be a substantial change, the Board is not precluded from considering whether it might adopt the suggestion as a matter of policy, particularly since that apparently is the

method presently used to set these allowances. The Board may, if it chooses, consider the MAFAA suggestion apart from this rulemaking proceeding.

18. The proposed rules exempt work-study grant recipients from the 15-credit full-time status requirement. In its SONAR, the Board explained that it believed it was appropriate to maintain the 12-credit requirement for purposes of the State work-study program because the program "typically assists students who do not demonstrate sufficient financial need for grant assistance, but demonstrate need for some type of financial assistance" and that the exception from the 15-credit definition "will permit more students demonstrating some need for financial assistance to participate in the State Work Study Program." SONAR at 2. The exemption with respect to work-study grants is appropriate, since the legislative amendment defining "full-time" as

enrollment in 15 credits was included in a section of the statute that applies only to Minn. Stat. 136A.095 to 136A.134. Work-study grants are established by Minn. Stat. 136A.233 (1990). The Board has demonstrated that Subpart 8a is needed and reasonable.

Subpart 10 - Minnesota Resident

19. Subpart 10 of the existing Board rules defines "Minnesota resident" for the purposes of eligibility for grants. The Board proposed to amend item C of the current rules to specify that a student who graduated from a Minnesota high school is considered a Minnesota resident unless the student was a resident of a bordering state while attending a Minnesota high school. The exclusion of such individuals from the definition of "Minnesota resident" is consistent with a recent statutory amendment to chapter 136A. lee Minn. Stat. 136A.101, subd. 8(3) (1992 Supp.). No commentators objected to this subpart of the proposed rules. The Board has shown that the amendment to item C of subpart 10 is needed and reasonable to conform the rule to the governing statute.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIQNS

1. The Minnesota Higher Education Coordinating Board ("the Board") gave proper notice of this rulemaking hearing.

2, The Board has substantially fulfilled the procedural requirements of Minn. Stat. 14.14, subds. 1, la and 2 (1990), and all other procedural requirements of law or rule so as to allow it to adopt the proposed rules.

3. The Board has demonstrated its statutory authority to adopt the proposed rules, and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. 14.05, subd. 1, 14.15, subd. 3, and 14.50 (i) and (ii) (1990).

4. The Board has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts in the record within the meaning of Minn. Stat. 14.14, subd. 2 and 14.50 (iii) (1990).

5. No additions or amendments to the proposed rules were suggested by the Board after publication of the proposed rules in the State Register and thus the rules are not substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. 14.15,

subd. 3 (1990), and Minn. Rules pts. 1400.1000, subp. 1, and 1400.1100 (1991).

6. Any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

7. A finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Board from further modification of the proposed rules based upon an examination of the public comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECQMMENDATION

IT IS HEREBY RECOMMENDED that the proposed rules be adopted consistent with the Findings and Conclusions made above.

Dated this 23rd day of March, 1992.

BARBARA L. NEILSON
Administrative Law Judge

Reported: Tape Recorded (No Transcript Made)